

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Modesto, California

August 7, 2000 at 9:00 a.m.

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1. 00-92002-A-7 SHIRLEY A. GARRISON HEARING ON MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
GMAC VS. PART II
7/14/00 [10]

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The subject property has a value of \$8,275.00 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$7,81.54. After an award of \$400 in attorneys' fees and costs, there is a de minimis amount of equity. That equity is insufficient to adequately protect the movant while the debtor retains and uses the vehicle without making payments to the movant (the debtor is in arrears to monthly payments). This is cause to terminate the stay. Fees and costs of \$400 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

2. 00-91805-A-7 ROBERT & CARLA ATKINS HEARING ON MOTION FOR
AC #1 RELIEF FROM AUTOMATIC STAY
CHASE MANHATTAN MORTGAGE PART II
CORPORATION VS. 7/11/00 [7]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$140,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$128,538.38. There is a junior deed of trust securing a claim of \$10,000. The debtor has failed to make four monthly installment payments to the movant. After an award of \$675 in attorneys' fees and costs, there is a de minimis amount of equity.

That equity is insufficient to adequately protect the movant while the debtor retains and uses the subject property without making regular payments to the movant. This is cause to terminate the automatic stay. Fees and costs of \$675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

3. 00-91308-A-11 RAYMOND & TAMARA WILLEY HEARING ON MOTION FOR
LFJ #1 RELIEF FROM AUTOMATIC STAY ETC
H.F. DATA VS. PART II
7/14/00 [61]

Tentative Ruling: The motion is granted. Schedule D filed by the debtors admits that the subject real property is encumbered by total liens and security interests of \$1,563,866.50. Of this amount, only \$79,000 is scheduled as disputed, contingent, or unliquidated. Therefore, whether the value is 375,000, as argued by the movant, or \$570,000, as argued by the debtors, the property is over-encumbered. Further, assuming the property can be sold for \$570,000, given this debt, the debtors have not demonstrated that the property is necessary to their reorganization. The motion is granted pursuant to 11 U.S.C. § 362(d)(2).

4. 00-92108-A-7 BOBBY & YVONNE SEIBERT HEARING ON MOTION FOR
RLE #1 RELIEF FROM AUTOMATIC STAY
CHRYSLER FINANCIAL COMPANY PART II
L.L.C. VS. 7/13/00 [6]

Tentative Ruling: The motion is granted in part. The subject property has a value of \$5,850 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$3,415.42. Thus, there is equity, making relief pursuant to 11 U.S.C. § 362(d)(2) inappropriate. Further, the approximate \$2,400 equity cushion will adequately protect the movant vis a vis the debtor during the remainder of this case. There is no cause to terminate the stay pursuant to 11 U.S.C. § 362(d)(1). The debtor is scheduled to receive a discharge on September 5, 2000. There is nothing in the file which leads the court to believe that a discharge will be delayed. As to the debtor, the motion is denied. The stay will terminate as matter of law as to the debtor and the debtor's property upon discharge. 11 U.S.C. § 362(c).

As to the estate, the motion is granted. The trustee has filed a "no-asset" report and the debtor has exempted all equity in the subject property. The estate has no interest in the vehicle. The stay is terminated as to the estate pursuant to 11 U.S.C. § 362(d)(1). Fees and costs of \$400 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid.

5. 00-92014-A-7 NETH CONSTRUCTION, INC. HEARING ON MOTION FOR
JWMC #1 RELIEF FROM AUTOMATIC STAY
JOSEPH W. MCCARTHY VS. 7/17/00 [14]

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the district court to conclude the interpleader action. To the extent the estate has an interest in the amount in dispute, it can present its claim in the district court. Contrary to the opposition, the order of the district court referring all bankruptcy cases to this court did not result in the referral/transfer of the interpleader. It remains at the district court.

6. 00-92014-A-7 NETH CONSTRUCTION, INC. HEARING ON MOTION FOR
RKD #1 RELIEF FROM AUTOMATIC STAY
CITY OF STOCKTON VS. PART III
7/26/00 [20]

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part III. If the debtor, the trustee, or any other party in interest appears in opposition to the motion, the court will assign a briefing schedule and a final hearing date and time. If no one appears in opposition to the motion, the court will take up the merits of the motion.

7. 00-91619-A-7 STEPHEN & TERESA BURKE HEARING ON MOTION FOR
TJP #1 RELIEF FROM AUTOMATIC STAY
HOUSEHOLD AUTOMOTIVE FINANCE 7/14/00 [20]
CORPORATION VS.

Tentative Ruling: Because the motion does not comply with the requirements of LBR 4001-1, Part II, the motion is deemed brought under LBR 4001-1, Part III. The movant has waived the time limitations of section 362(e). If the debtor, the trustee, or any party in interest appears to oppose the motion, the court will assign a briefing schedule and a final hearing date and time. If there is no opposition, the court will consider the merits of the motion.

8. 00-91432-A-7 STACY & DARLENE MCCULLOUGH HEARING ON MOTION TO
MODIFY STAY TO PERMIT
MARY ELLEN ADAMS & LUISA ROBLES PROSECUTION OF PENDING
ESQUIVEL VS. PERSONAL INJURY SUIT
PART III
7/7/00 [18]

Final Ruling: There is a service defect. Fed.R.Bankr.P. 7004(b)(9) and 9014 require that all motions be served on the debtor as well as the debtor's counsel. This motion was served on the debtor's attorney only. The motion is denied without prejudice. **Note: if this motion is refiled, it must include a motion control number as required by LBR 9014-1, Part I (c). If this is omitted, the movant will not be permitted to appear by telephone. Cf. LBR 4001-1, Part II (f).**

9. 99-94142-A-7 KEVIN E. ATKINS HEARING ON MOTION FOR
JMG #1 RELIEF FROM AUTOMATIC STAY ETC
BANK OF AMERICA VS. PART II
7/13/00 [23]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and

all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$165,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$159,371.80. After considering the junior deed of trust of \$42,000, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Fees and costs of \$675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

10. 00-92458-A-7 STEPHANIE MAY RICE HEARING ON MOTION FOR
SJM #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE, PART II
INC. VS. 7/13/00 [6]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$135,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$141,154.48. After considering all other liens and security interests, if any, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

11. 00-91978-A-7 RAMON & MARIBEL AGUILAR HEARING ON MOTION FOR
MET #1 RELIEF FROM AUTOMATIC STAY ETC
AMERICAN HONDA FINANCE CORP. VS. PART II
7/13/00 [10]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be

resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The subject property has a value of \$22,265.00 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$21,624.33. After considering interest accruing since the filing of the motion and the fees and costs awarded herein, there is no equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the subject property for the benefit of creditors. Fees and costs of \$475 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

12. 00-91483-A-7 ANTHONY & NANCY L. MCAFEE HEARING ON MOTION FOR
MPD-1 RELIEF FROM AUTOMATIC STAY
PART II
7/18/00

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$550,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$295,864.40. After considering the junior liens and security interest totaling over \$440,000, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Fees and costs of \$675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

13. 00-91785-A-7 DOLORES H. GARCIA HEARING ON MOTION FOR
DFB #1 RELIEF FROM AUTOMATIC STAY
ASSOCIATES COMMERCIAL CORP. VS. 7/20/00 [16]

Final Ruling: This motion is denied without prejudice. This motion is filed pursuant to LBR 4001-1, Part II. This local rule requires that motions from relief from the automatic stay be set on 22 days' notice to the debtor, debtor's counsel, and the trustee. LBR 4001-1, Part II(a), incorporating LBR 9014-1, Part II(b)(1). This motion has been set on 21 days' notice.

14. 00-91692-A-7 VICTOR & SARAH MARTINEZ
SW #1
GMAC VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
7/18/00 [9]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The debtor has either failed to insure the subject vehicle securing the movant's claim or to provide evidence of that insurance as required by the security agreement. This is cause for termination of the automatic stay. Fees and costs of \$400 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

15. 99-91496-A-7 KELLY & COLEEN DOYLE
AJH #1
COUNTRYWIDE HOME LOANS, INC. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY ETC
PART II
7/6/00 [19]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$69,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$73,486.22. After considering all other liens and security interests, if any, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).